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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Hirohito SUDA, et al.

SERIAL NO: 10/731,147

GROUP: 2681

FILED: December 10, 2003

EXAMINER: Jean Alland GELIN

FOR: MOBILE COMMUNICATION TERMINAL, SERVER, COMMUNICATION
SYSTEM, COMMUNICATION CONTROL METHOD, AND
COMMUNICATION CONTROL PROGRAM

LETTER

Mail Stop DD
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is a People's Republic of China Office Action for the Examiner's consideration. The reference cited therein has been previously filed on July 7, 2004.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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THE PATENT OFFICE OF THE PEOPLE'S REPUBLIC OF CHINA

Address: 6 Xi Tu Cheng Lu, Haidian, Beijing

Post Code: 100088

Applicant:	NTT DOCOMO, INC.	Date of Notification: Date: <u>11</u> Month: <u>03</u> Year: <u>2005</u>
Attorney:	LILI WU	
Application No.:	200310120268.0	
Title of the Invention:	MOBILE COMMUNICATION TERMINAL, SERVER, COMMUNICATION SYSTEM, COMMUNICATION CONTROL METHOD, AND COMMUNICATION CONTROL PROGRAM	

Notification of the First Office Action

1. ☒ The applicant requested examination as to substance and examination has been carried out on the above-identified patent application for invention under Article 35(1) of the Patent Law of the People's Republic of China(hereinafter referred to as "the Patent Law").
☐ The Chinese Patent Office has decided to examine the application on its own initiative under Article 35(2) of the Patent Law.
2. ☒ The applicant claimed priority/priorities based on the application(s):
filed in JP on Dec. 10, 2002, filed in _____ on _____,
filed in JP on Aug. 8, 2003, filed in _____ on _____,
filed in _____ on _____, filed in _____ on _____,
☒ The applicant has provided the priority documents certified by the Patent Office where the priority application(s) was/were filed.
☐ The applicant has not provided the priority documents certified by the Patent Office where the priority application(s) was/were filed and therefore the priority claim(s) is/are deemed not to have been made under Article 30 of the Patent Law.
☐ The application is a PCT continuation.
3. ☐ The applicant submitted amendments to the application on _____ and on _____, wherein the amended _____ submitted on _____ and the amended _____ submitted on _____ are not acceptable, because said amendments do not comply with ☐Article 33 of the Patent Law.
☐Rule 51 of the Implementing Regulations of the Patent Law.
The specific reasons why the amendments are not allowable are set forth in the text portion of this Notification.
4. ☒ Examination as to substance was directed to the initial application documents as filed.
☐ Examination as to substance was directed to the documents as specified below:
pages _____ of the description, claims _____ and pages _____ of the drawings submitted on _____,
pages _____ of the description, claims _____ and pages _____ of the drawings submitted on _____,
pages _____ of the description, claims _____ and pages _____ of the drawings submitted on _____,
the abstract submitted on _____, and the figure for the abstract submitted on _____.
5. ☐ This Notification is issued without search reports.
☒ This Notification is issued with consideration of the search results.
☒ Below is/are the reference document(s) cited in this Office Action(the reference number(s) will be used throughout the examination procedure):

No.	Number(s) or Title(s) of Reference(s)	Date of Publication (or the filing date of conflicting application)
1	WO0211074A2 Filed 7-7-04	Date: 7 Month: 2 Year: 2002
2		Date: __ Month: __ Year: __
3		Date: __ Month: __ Year: __
4		Date: __ Month: __ Year: __

6. Conclusions of the Action:

☐ On the Specification:

- ☐ The subject matter contained in the application is not patentable under Article 5 of the Patent Law.
- ☐ The description does not comply with Article 26 paragraph 3 of the Patent Law.
- ☐ The draft of the description does not comply with Rule 18 of the Implementing Regulations.

☒ On the Claims:

- ☒ Claim(s) 20 is/are not patentable under Article 25 of the Patent Law.
- ☐ Claim(s) _____ does/do not comply with the definition of inventions prescribed by Rule 2 paragraph 1 of the Implementing Regulations.
- ☐ Claim(s) _____ does/do not possess the novelty as required by Article 22 paragraph 2 of the Patent Law.
- ☒ Claim(s) 1-19 does/do not possess the inventiveness as required by Article 22 paragraph 3 of the Patent Law.
- ☐ Claim(s) _____ does/do not possess the practical applicability as required by Article 22 paragraph 4 of the Patent Law.
- ☐ Claim(s) _____ does/do not comply with Article 26 paragraph 4 of the Patent Law.
- ☐ Claim(s) _____ does/do not comply with Article 31 paragraph 1 of the Patent Law.
- ☐ Claim(s) _____ does/do not comply with the provisions of Rules 20-23 of the Implementing Regulations.
- ☐ Claim(s) _____ does/do not comply with Article 9 of the Patent Law.
- ☐ Claim(s) _____ does/do not comply with the provisions of Rule 12 paragraph 1 of the Implementing Regulations.

7. In view of the conclusions set forth above, the Examiner is of the opinion that:

- ☐ The applicant should make amendments as directed in the text portion of the Notification.
- ☐ The applicant should expound in the response reasons why the application is patentable and make amendments to the application where there are deficiencies as pointed out in the text portion of the Notification, otherwise, the application will not be allowed.
- ☒ The application contains no allowable invention, and therefore, if the applicant fails to submit sufficient reasons to prove that the application does have merits, it will be rejected.
- ☐

8. The followings should be taken into consideration by the applicant in making the response:

- (1) Under Article 37 of the Patent Law, the applicant should respond to the office action within 4 months counting from the date of receipt of the Notification. If, without any justified reason, the time limit is not met, the application shall be deemed to have been withdrawn.
- (2) Any amendments to the application should be in conformity with the provisions of Article 33 of the Patent Law. Substitution pages should be in duplicate and the format of the substitution should be in conformity with the relevant provision contained in "The Examination Guidelines".
- (3) The response to the Notification and/or revision of the application should be mailed to or handed over to the "Reception Division" of the Patent Office, and documents not mailed or handed over to the Reception Divisions have no legal effect.
- (4) Without an appointment, the applicant and/or his agent shall not interview with the Examiner in the Patent Office.

9. This Notification contains a text portion of 2 pages and the following attachments:

- ☒ 1 cited reference(s), totaling 33 pages. ☐

Examination Dept. 9 Examiner: Yao Yuehua Seal of the Examination Department

Text of the First Office Action

This application relates to mobile communication terminal, server, communication system, communication control method and communication control program. Based on the examination, the examiner makes the following comments:

1. Claims 1-19 do not involve inventive steps, which is not compliant with Article 22(3) of the Chinese Patent Law.

Cited reference document D1 (WO0211074A2) disclosed mobile communication terminal, server, communication system, communication control method that can server local transmission, and specifically reveals the following features (see page 5, lines 4-19, page 10, lines 4-9 and 20-28, page 15, lines 8-30, page 15, line 31 to page 16, line 10, page 17, lines 2-13, page 22, lines 10-28 and page 25, lines 1-9):

A mobile communication terminal comprising:

identification information receiving means for receiving identification information from at least one mini-communicator which transmits predetermined identification information of its own; (see page 25, lines 1-9 of D1)

cellular communication means for implementing communication with a server or another terminal via a cellular communication network; and

switching control means for receiving a switching signal for switching among a plurality of modes comprising an identification information receive mode of activating only the identification information receiving means out of the identification information receiving means and the cellular communication means, and a cellular communication mode of activating only the cellular communication means, and for performing a mode switching control based on the received switching signal. (see page 5, lines 4-19 of D1)

As can be seen, D1 has disclosed all the technical features of claim 1 and as a result those of claims 9, 12 and 16. One skilled in the art will understand that the technical solutions of claims 1, 9, 12 and 16 can certainly be used in the business environment as described in D1, and the effect is the same. Therefore, claims 1, 9, 12 and 16 do not involve an inventive step.

Most of the technical features of dependent claims 2-8, 10, 11, 13-15, 17-19 are

disclosed or suggested in D1 (see page 5, lines 4-19, page 10, lines 4-9 and 20-28, page 15, lines 8-30, page 15, line 31 to page 16, line 10, page 17, lines 2-13, page 22, lines 10-28 and page 25, lines 1-9). As for the features that are not disclosed in D1 (such as “measuring a signal intensity of a min-communicator” of claim 2, “acquiring the traffic information in the cellular communication network” of claim 3, “using a separate transmission/reception channel for transmission” of claim 8, and “generating a reference time as a reference of time stamp” of claim 14) are merely common knowledge in the related art. As a result, it is also obvious for a skilled person to arrive at the technical solution of the respective dependent claims. Therefore, the above dependent claims do not involve an inventive step.

2. Claim 20 seeks to protect a communication control program, which is not subject to patent protection under item 2 of Article 25(1) of the Chinese Patent Law.

Based upon the above reasons, the application cannot be patented based on the present application documents. Meanwhile, the specification does not present any substantial content that is patentable. Therefore, the application does not have the prospect of being granted. If the applicant can not provide convincing reasons in due course, this application will be rejected.

Articles and Rules Cited by the Examiner in this Office Action

Article 22

Any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability.

Novelty means that, before the date of filing, no identical invention or utility model has been publicly disclosed in publications in the country or abroad or has been publicly used or made known to the public by any other means in the country, nor has any other person filed previously with the Patent Office an application which described the identical invention or utility model and was published after the said date of filing.

Inventiveness means that, as compared with the technology existing before the date of filing the invention has prominent substantive features and represents a notable progress and that the utility model has substantive features and represents progress.

Practical applicability means that the invention or utility model can be made or used and can produce effective results.

Article 25

For any of the following, no patent right shall be granted:

- (1) scientific discoveries;
- (2) rules and methods for mental activities;
- (3) methods for the diagnosis or for the treatment of diseases;
- (4) animal and plant varieties;
- (5) substances obtained by means of nuclear transformation.

For processes used in producing products referred to in items (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.

Attorney's Comments

In this office action, claims 1-19 are objected to for lacking inventive step based on the teachings of D1. The applicant is advised to make amendments or arguments to render the objection moot.

The applicant is also advised to cancel claim 20.



中华人民共和国国家知识产权局

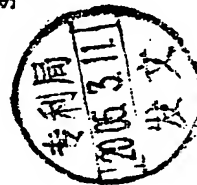
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中国国际贸易促进委员会专利商标事务所

吴丽丽

发文日期



E033347

申请号: 2003101202680



申请人: 株式会社 NTT 都科摩

发明创造名称: 移动通信终端, 服务器, 通信系统, 通信控制方法和通信控制程序

第一次审查意见通知书

1. ☒ 应申请人提出的实审请求, 根据专利法第 35 条第 1 款的规定, 国家知识产权局对上述发明专利申请进行实质审查。

☐ 根据专利法第 35 条第 2 款的规定, 国家知识产权局决定自行对上述发明专利申请进行审查。

2. ☒ 申请人要求以在:

JP 专利局的申请日 2002 年 12 月 10 日为优先权日,

JP 专利局的申请日 2003 年 08 月 08 日为优先权日,

专利局的申请日 年 月 日为优先权日,

专利局的申请日 年 月 日为优先权日,

专利局的申请日 年 月 日为优先权日。

☒ 申请人已经提交了经原申请国受理机关证明的第一次提出的在先申请文件的副本。

☐ 申请人尚未提交经原申请国受理机关证明的第一次提出的在先申请文件的副本, 根据专利法第 30 条的规定视为未提出优先权要求。

3. ☐ 经审查, 申请人于:

年 月 日提交的 不符合实施细则第 51 条的规定;

年 月 日提交的 不符合专利法第 33 条的规定;

年 月 日提交的

4. 审查针对的申请文件:

☒ 原始申请文件。 ☐ 审查是针对下述申请文件的

申请日提交的原始申请文件的权利要求第 项、说明书第 页、附图第 页;

年 月 日提交的权利要求第 项、说明书第 页、附图第 页;

年 月 日提交的权利要求第 项、说明书第 页、附图第 页;

年 月 日提交的权利要求第 项、说明书第 页、附图第 页;

年 月 日提交的说明书摘要, 年 月 日提交的摘要附图。

5. ☐ 本通知书是在未进行检索的情况下作出的。

☒ 本通知书是在进行了检索的情况下作出的。

☒ 本通知书引用下述对比文献(其编号在今后的审查过程中继续沿用):

编号 文件号或名称 公开日期(或抵触申请的申请日)

1 W00211074 A2 2002-02-07

6. 审查的结论性意见:

☐ 关于说明书:

☐ 申请的内容属于专利法第 5 条规定的不授予专利权的范围。



第一次审查意见通知书正文

申请号：2003101202680

该申请存在如下问题：

1 权利要求1-19不具备创造性，不符合专利法第22条第3款的规定。

对比文件D1已经公开了一种可服务于本地传输的移动通信终端、服务器、系统和方法，并披露了下列特征（参见说明书第5页4-19行，第10页4-9行、20-28行，第15页8-30行，第15页31行-第16页10行，第17页2-13行，第22页10-28行，第25页1-9行）：

“一种移动通信终端，包括：

从传送自身的预定标识信息的至少一个微型通信机接收标识信息的标识信息接收装置（参见说明书第25页1-9行）；

通过蜂窝通信网络实现和服务器或另一终端通信的蜂窝通信装置；和

接收用于在若干模式间转换的转换信号，并根据接收的转换信号，进行模式转换控制的转换控制装置，所述若干模式包括只启动标识信息接收装置和蜂窝通信装置中的标识信息接收装置的标识信息接收模式，和只启动蜂窝通信装置的蜂窝通信模式（参见说明书第5页4-19行）”

由上可知，对比文件D1已经披露了权利要求1及相应的权利要求9、12、16的所有技术特征，且本领域技术人员都知道，权利要求1、9、12、16的技术方案显然是可应用在对比文件D1所描述的商业环境中的，其目的及效果相同，故权利要求1、9、12、16不具备创造性。

从属权利要求2-8、10-11、13-15、17-19的多数附加特征已经公开或隐含地被对比文件D1所披露（参见说明书第5页4-19行，第10页4-9行、20-28行，第15页8-30行，第15页31行-第16页10行，第17页2-13行，第22页10-28行，第25页1-9行），至于未被披露的附加技术特征（权利要求2中的“测量微型通信机的信号强度”、权利要求3中的“获取蜂窝通信网络中的通信量信息”、权利要求8中的“使用独立的传输/接收信道传送信息”、权利要求14中的“产生时间戳记基准的参考时间”），不过是本领域技术人员的常用手段而已。本领域技术人员是很容易在其引用的权利要求的基础上，结合这些特征，以得出权利要求2-8、10-11、13-15、17-19的技术方案的，故权利要求2-8、10-11、13-15、17-19也无创造性。

2、权利要求20请求保护一种通信控制程序，其实质上是请求保护与权利要求1相同的通信控制方法，根据专利法第25条第1款第二项的规定，由于计算机程序本身是不给予专利保护的，所以权利要求20不能被授予专利权。

基于上述理由，本申请不能被授予专利权，而且本申请的说明书中也没有记载其它任何可获得专利权的实质性内容，因而即使对申请文件进行修改，本申请也不具备被授予专利权的前景。如果申请人不能在本通知书规定的答复期限内提出具有说服力的理由，本申请将被驳回。

审查员：姚跃华

代码：9338